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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,952	06/25/2003	Peter Lyon Harris	292-pd4-99-20 CON	3111
79990 7590 10/15/2009				
C. R. Bard, Inc. Bard Peripheral Vascular, Inc. 1415 W. 3rd Street P.O. Box 1740 Tempe, AZ 85280-1740				
EXAMINER				
WILLSE, DAVID H				
ART UNIT		PAPER NUMBER		
3738				
MAIL DATE		DELIVERY MODE		
10/15/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/603,952

**Applicant(s)**

HARRIS ET AL.

**Examiner**

David H. Willse

**Art Unit**

3738

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 14-24 and 27-32 is/are pending in the application.
- 4a) Of the above claim(s) 28-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14-24, and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on June 8, 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Newly submitted claims 28-32 are directed to an invention that is independent or distinct from the invention originally claimed as explained in the Office action of February 17, 2006. Since Applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 28-32 are withdrawn from consideration as being directed to a non-elected invention (37 CFR 1.142(b) and MPEP § 821.03).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 27 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Caro, WO 95/09585 A1. Figure 9 shows a tube with a first portion 5 having a constant inner dimension and, proximate the blood carrying vessel 7, a second portion having a variable inner dimension (as better illustrated in Figures 6-8) and a non-circular opening at the “offset ‘plumber’s’ joint” (paragraph bridging pages 6 and 7).

Claims 1-11 and 14-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Caro, WO 95/09585 A1. The embodiment of Figure 6 includes a generally tubular portion 5 and end formations 2a and 3a configured for surgical connection to respective openings in a blood vessel

6. Tapering of the tubular portion 5 near the end formations 2a and/or 3a would have been obvious (if not inherent) in order to form an elbow or in order to provide a soft tissue transition from an expanded stented portion (page 6, lines 6-10) to the flanged tissue attachment portions. Regarding claim 2 and others, the enlarged chamber geometry is better illustrated in Figure 8 (albeit for a different embodiment): the transition to the “toe” is convex by virtue of the elbow formation and has a final concave portion to define an attachment area that is generally tangential to the natural blood vessel wall. Regarding claim 3 and others, attention is directed to page 6, lines 20-23. Regarding claim 6, the Caro invention is directed to various types of blood vessels for a diversity of patients (pages 1-3), so the particular dimensions would have been immediately obvious (in view of Figure 9, for example) to one of ordinary skill in the art. Regarding claim 15 and others, ePTFE was quite common in the art at the time of the present invention and would have been an obvious choice for the “suitable biocompatible material” (page 6, lines 4-6) in order to impart “resiliently flexible” properties (page 8, claim 4).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is 571-272-4762 and who is generally available Monday, Tuesday, and Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**/David H. Willse/  
Primary Examiner  
Art Unit 3738**